IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 263 of 2006

Umesh Agarwal
S/o Jagdish Saram Agrawal
Proprietor Agrawal & Company
R/o Mahesh Nagar Colony (Nawabi Road)
Haldwani (Nainital) .....Applicant

Versus

1. State of Uttaranchal

2. Addl. Civil Judge (J.D.)/J.M. Kashipur
Udham Singh Nagar

3. Cheda Lal S/o Puran Singh
R/o Moh. Adarsh Nagar
Sultanpur Patti,
Police Station- Bazpur
District- Udham Singh Nagar ...Respondents

Sri Bhupendra Singh Negi, learned counsel for the applicants.
Sri Nandan Arya, learned A.G.A. for the State

Hon'ble J. C. S. Rawat, J.

This petition u/s 482 Cr.P.C. has been filed for setting aside the summoning order dated 17.01.2006 passed by the learned Addl. Civil Judge (J.D.)/J.M., Kashipur, Udham Singh Nagar in criminal case no. 494 of 2005, Cheda Lal Vs. Umesh Agarwal.

A complaint was filed before the court below wherein it has been alleged that on 27.02.2005, the applicant was going near to the house of the complainant and when he saw the complainant, the applicant returned back by the car and came to the complainant and abused him and demanded the payment. The applicant further stated that he had given him a notice for demand of the payment. The complainant replied that you did not pay him the full amount of the construction of the road. On hearing this, the applicant became angry and he had beaten the complainant. The complainant examine himself u/s 200 Cr.P.C. and he examined the witnesses u/s 202 Cr.P.C.

After recording the statement, the Magistrate has taken the cognizance on 10.06.2005.

I have heard learned counsel for the parties and perused the record.

On the last occasion when the cognizance order was challenged before the court, it was observed that there was a dispute with regard to the payment which is to be made by the complainant to the applicant. It was found that the Magistrate had not put the question to the witnesses to examine the veracity of the complaint and it was observed that the Magistrate to put the questions to the witnesses with regard to the veracity of the incident and thereafter pass an appropriate order in accordance with the law. In view of the judgment of the Apex Court in M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997(8) S.C. p/705 the matter was remanded to the Magistrate to put the questions to the witnesses. There the court directed to the trial court to pass the appropriate order on being satisfied with the veracity of complaint.

The learned counsels further contended that the learned Magistrate had not summoned the document which are relevant in this case. When I specifically put too the question to the learned counsel what are the documents, he was not able to give any answer. the learned counsel for the applicant has also not made any averment in the petition which are the documents the Magistrate had not summoned. Thus the learned Magistrate had not committed any error in taking the cognizance against the accused. There is a prima-facie case against the accused- applicant.

In view of the above, the petition devoids of merit is liable to be dismissed and the same is dismissed accordingly.

(J.C.S. Rawat, J.)

25th April 2006
Shiv